



229307

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LPS-n229307-v1

CERTIFICATE OF SERVICE OF COMPLAINT ON UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY AND UNITED STATES DEPARTMENT OF JUSTICE

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Document Type: PLEADING

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Lu, Sarah (ENRD); Berman, Lisa (ENRD)

Fileroom: LPS - Main Justice

DJ#:

Case Name:

Court:

Notes: Scanned/Unassigned

Double-Sided:

Received Date: 7/18/2013

Urgent:

Oversize:

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10 CALIFORNIA RIVER WATCH

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 CALIFORNIA RIVER WATCH, a
14 501(c)(3) nonprofit, public benefit
15 Corporation,

16 Plaintiff,

17 v.

18 LUNNY GRADING & PAVING, INC.;
19 NICASIO ROCK QUARRY; DOES
20 1-10, Inclusive,

21 Defendant.
22 _____/

CASE NO. 4:13-cv-03174 KAW

**CERTIFICATE OF SERVICE OF
COMPLAINT ON UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY AND UNITED STATES
DEPARTMENT OF JUSTICE**

DEPT. OF JUSTICE - ENRD
ENVIRONMENTAL DIVISION

13 JUL 18 P3:40

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CERTIFICATE OF SERVICE

I am employed in the County of Sonoma, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 100 E Street, Suite 318, Santa Rosa, CA 95404. On the date set forth below, I served the following described document(s):

**COMPLAINT FOR INJUNCTIVE RELIEF, DECLARATORY RELIEF, CIVIL
PENALTIES, RESTITUTION AND REMEDIATION (Environmental - Clean
Water Act 33 U.S.C. § 1251, *et seq*)**

on the following parties by placing a true copy in a sealed envelope, addressed as follows:

Citizen Suit Coordinator
U.S. Dept. of Justice
Environmental & Natural Resource Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415

Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

☒ (BY MAIL) I placed each such envelope, with postage thereon fully prepaid for first-class mail, for collection and mailing at Santa Rosa, California, following ordinary business practices. I am readily familiar with the practices of Law Office of Jack Silver for processing of correspondence; said practice being that in the ordinary course of business, correspondence is deposited with the United States Postal Service the same day as it is placed for processing.

☐ (BY FACSIMILE) I caused the above referenced document(s) to be transmitted by Facsimile machine (FAX) 707-528-8675 to the number indicated after the address(es) noted above.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct, and that this declaration was executed on July 15, 2013 at Santa Rosa, California.

/s/ Kayla Brown
Kayla Brown

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CALIFORNIA RIVER WATCH
7

KAW

ORIGINAL
FILED
JUL 09 2013
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

CV 13-8174

10 CALIFORNIA RIVER WATCH, a
501(c)(3), non-profit, Public Benefit
11 Corporation,

12 Plaintiff,

13 v.

14 LUNNY GRADING & PAVING, INC.;
NICASIO ROCK QUARRY; DOES
1-10, Inclusive,

15 Defendants.
16

CASE NO.:

**COMPLAINT FOR INJUNCTIVE
RELIEF, DECLARATORY RELIEF,
CIVIL PENALTIES, RESTITUTION
AND REMEDIATION**

**[Environmental - Clean Water Act - 33
U.S.C. § 1251 *et seq.*]**

17 NOW COMES Plaintiff CALIFORNIA RIVER WATCH ("Plaintiff") by and through its
18 attorneys, and for its Complaint against Defendants, LUNNY GRADING & PAVING, INC.,
19 NICASIO ROCK QUARRY and DOES 1-10, Inclusive ("Defendants") states as follows:

20 **I. INTRODUCTION**

21 1. This is a civil suit brought under the citizen suit enforcement provisions of the Federal
22 Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* ("Clean Water Act" or "CWA")
23 specifically 33 U.S.C. § 1311, 33 U.S.C. § 1342, and 33 U.S.C. § 1365, to prevent Defendants
24 from repeated and ongoing violations of the CWA. These violations are detailed in the February
25 11, 2013 Notice of Violations and Intent to File Suit made part of the pleadings of this case and
26 attached hereto as EXHIBIT A.

27 //

1 2. Plaintiff alleges that in the course of Defendants' ownership, control and/or operation
2 of a rock quarry facility in Nicasio, Marin County, California, Defendants are routinely violating
3 the CWA's prohibitions against discharging pollutants from a point source to waters of the
4 United States and are routinely violating the terms of the NPDES permits which regulate storm
5 water discharges.

6 3. Plaintiff alleges Defendants have violated "effluent standards or limitations" by
7 discharging pollutants from various point sources into waters of the United States, specifically
8 Halleck Creek and the Lagunitas Creek Watershed, in violation of California's General Permit
9 for Industrial Storm Water Discharges.

10 4. Plaintiff seeks declaratory relief and injunctive relief to prohibit future violations and
11 other injunctive relief for Defendants' violations of the CWA as alleged herein.

12 II. JURISDICTION AND VENUE

13 5. Subject matter jurisdiction is conferred upon this Court by CWA §505(a)(1), 33 U.S.C.
14 § 1365(a)(1) which states, in relevant part,

15 "any citizen may commence a civil action on his own behalf against any person
16 (including . . . any other governmental instrumentality or agency) who is alleged
17 to be in violation of (A) an effluent standard or limitation under this chapter or
18 (B) an order issued by the Administrator or State with respect to such standard
19 or limitation." For purposes of CWA §505, "the term 'citizen' means a person
20 or persons having an interest which is or may be adversely affected."

21 6. Plaintiff's members reside in the vicinity of, derive livelihoods from, own property in,
22 and/or recreate on, in or near, or otherwise enjoy and benefit from the watershed and associated
23 natural resources near which the Defendants' operations take place. The health economic,
24 recreational, aesthetic, and environmental interests of Plaintiff's members have been, are being,
25 and will continue to be adversely affected by the Defendants' unlawful violations as alleged
26 herein.

27 //

1 7. On February 11, 2013, Plaintiff provided notice of Defendants' violations of the CWA
2 and of Plaintiff's intent to file suit to: (a) Defendants (b) the Environmental Protection Agency
3 ("EPA,") Federal and Regional, and (c) the State of California Water Resources Control Board.
4 A true and correct copy of the Notice of Violations and Intent to File Suit is attached to this
5 Complaint as EXHIBIT A and incorporated by reference.

6 8. More than sixty (60) days have passed since notice was served on Defendants and the
7 state and federal agencies. Plaintiff is informed and believes, and thereupon alleges, that neither
8 the EPA nor the State of California has commenced or is diligently prosecuting a court action
9 to redress the violations alleged in this Complaint. This action is not barred by any prior
10 administrative penalty under CWA § 309(g), 33 U.S.C. § 1319(g).

11 III. PARTIES

12 9. Plaintiff CALIFORNIA RIVER WATCH is a 501(c)(3) non-profit, Public Benefit
13 Corporation duly organized under the laws of the State of California, with headquarters and main
14 office in Sebastopol, California, dedicated to protect, enhance and help restore the groundwater
15 and surface water environs of California including, but not limited to its rivers, creeks, streams,
16 wetlands, vernal pools and tributaries. To further these goals, Plaintiff actively seeks federal and
17 state agency implementation of the CWA and other laws and, where necessary, directly initiates
18 enforcement actions on behalf of itself and its members.

19 10. Plaintiff's members live in Marin County and use and enjoy the waters into which
20 Defendants have caused, are causing, and will continue to cause, pollutants to be discharged.
21 Said members have interests in Halleck Creek and the Lagunitas Creek Watershed which have
22 been, are being, or may be adversely affected by Defendants' violations of the CWA as alleged
23 in this Complaint. Said members use the affected waters for recreation, sports, fishing, boating,
24 kayaking, swimming, hiking, photography, nature outings, and the like. The relief sought will
25 redress the injury in fact to Plaintiff and its members and the likelihood of future injury and
26 interference with the interests of said members caused by Defendants' activities as described in
27 this Complaint.

1 11. Continuing commission of the acts and omission alleged will irreparably harm Plaintiff
2 and its members, for which harm Plaintiff has no plain, speedy, or adequate remedy at law.

3 12. Plaintiff is informed and believes, and on such information alleges, that Defendant
4 LUNNY GRADING & PAVING, INC. is a corporation organized under the laws of the State
5 of California, registered with the Secretary of State to do business in the State of California, with
6 a main business location in Inverness, California; and is and was, at all times relevant to this
7 Complaint, the owner and operator of NICASIO ROCK QUARRY.

8 13. Plaintiff is informed and believes, and on such information alleges, that Defendant
9 NICASIO ROCK QUARRY is a rock quarry business located at 5400 Nicasio Valley Road in
10 Nicasio, Marin County, California, owned and operated at all times relevant to this Complaint
11 by Defendant LUNNY GRADING & PAVING, INC.

12 14. Plaintiff is informed and believes and on such information alleges that Defendants DOES
13 1 - 10, Inclusive, respectively, are persons, partnerships, corporations and entities who are, or
14 were, responsible for, or in some way contributed to, the violations which are the subject of this
15 Complaint or are, or were, responsible for the maintenance, supervision, management,
16 operations, or insurance coverage of Defendants' rock quarry in Nicasio, California. The names,
17 identities, capacities, and functions of defendants DOES 1 - 10, Inclusive are presently unknown
18 to Plaintiff. Plaintiff shall seek leave of court to amend this Complaint to insert the true names
19 of said DOES defendants when the same have been ascertained.

20 IV. STATUTORY BACKGROUND

21 15. CWA § 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into waters
22 of the United States, unless such discharge is in compliance with various enumerated sections
23 of the Act. Among other things, CWA § 301(a) prohibits discharges not authorized by, or in
24 violation of, the terms of a National Pollutant Discharge Elimination System ("NPDES") permit
25 issued pursuant to CWA § 402, 33 U.S.C. § 1342.

26 16. CWA § 402(p), 33 U.S.C. § 1342(p) establishes a framework for regulating municipal
27 and industrial stormwater discharges under the NPDES program. States with approved NPDES
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1 permit programs are authorized by Section 402(p) to regulate industrial stormwater discharges
2 through individual permits issued to dischargers and/or through the issuance of a single,
3 statewide general permit applicable to all industrial stormwater dischargers.

4 17. Pursuant to CWA § 402, 33 U.S.C. § 1342, the Administrator of the U.S. EPA has
5 authorized California's State Water Resources Control Board to issue NPDES permits including
6 general NPDES permits in California. The State Water Resources Control Board elected to issue
7 a statewide general permit for industrial discharges, and issued California's General Permit for
8 Industrial Storm Water Discharges, Water Quality Order No. 91-13-DWQ, as amended by Water
9 Quality Order No. 92-12-DWQ and Water Quality Order No. 97-03-DWQ, NPDES General
10 Permit No. CAS000001 ("General Permit") on or about November 19, 1991, modified the
11 General Permit on or about September 17, 1992, and reissued the General Permit on or about
12 April 17, 1997, pursuant to CWA § 402(p), 33 U.S.C. § 1342(p).

13 18. Pursuant to CWA § 301(a), 33 U.S.C. § 1311(a), in order to discharge stormwater
14 lawfully in California, industrial dischargers must comply with the terms of the General Permit
15 or have obtained and complied with an individual NPDES permit.

16 19. The General Permit contains certain absolute prohibitions. Discharge Prohibition A(1)
17 of the General Permit prohibits the direct or indirect discharge of materials other than stormwater
18 ("non-stormwater discharges"), which are not otherwise regulated by a NPDES permit, to the
19 waters of the United States. Discharge Prohibition A(2) prohibits stormwater discharges and
20 authorized non-stormwater discharges that cause or threaten to cause pollution, contamination,
21 or nuisance. Receiving Water Limitation C(2) prohibits stormwater discharges that cause or
22 contribute to an exceedance of any applicable water quality standards contained in a Statewide
23 Water Quality Control Plan or the applicable Regional Water Quality Control Board's Basin
24 Plan.

25 20. In addition to absolute prohibitions, the General Permit contains a variety of substantive
26 and procedural requirements that dischargers must meet. Facilities discharging, or having the
27 potential to discharge, stormwater associated with industrial activity that have not obtained an
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1 individual NPDES permit must apply for coverage under the State's General Permit by filing a
2 Notice of Intent. The General Permit requires existing dischargers to file a Notice of Intent
3 before March 30, 1992.

4 21. Dischargers must also develop and implement a Storm Water Pollution Prevention Plan
5 ("SWPPP"). The SWPPP must comply with the standards of Best Available Technology
6 Economically Achievable ("BAT") and Best Conventional Pollutant Control Technology
7 ("BCT"). The General Permit requires that an initial SWPPP be developed and implemented
8 before October 1, 1992. The SWPPP must, among other requirements, identify and evaluate
9 sources of pollutants associated with industrial activities that may affect the quality of storm and
10 non-storm water discharges from the facility and identify and implement site-specific best
11 management practices ("BMPs") to reduce or prevent pollutants associated with industrial
12 activities in storm water and authorized non-storm water discharges (Section A(2)). BMPs must
13 implement BAT and BCT (Section B(3)). The SWPPP must include: a description of individuals
14 and their responsibilities for developing and implementing the SWPPP (Section A(3)); a site map
15 showing the facility boundaries, storm water drainage areas with flow pattern and nearby water
16 bodies, the location of the storm water collection, conveyance and discharge system, structural
17 control measures, impervious areas, areas of actual and potential pollutant contact, and areas of
18 industrial activity (Section A(4)); a list of significant materials handled and stored at the site
19 (Section A(5)); a description of potential pollutant sources including industrial processes,
20 material handling and storage areas, dust and particulate generating activities, and a description
21 of significant spills and leaks, a list of all non-storm water discharges and their sources, and a
22 description of locations where soil erosion may occur (Section A(6)). The SWPPP must include
23 an assessment of potential pollutant sources and a description of the BMPs to be implemented
24 that will reduce or prevent pollutants in storm water discharges and authorized non-storm water
25 discharges, including structural BMPs where non-structural BMPs are not effective (Section
26 A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where
27 necessary (Section A(9),(10)).

1 22. The General Permit requires dischargers to eliminate all non-stormwater discharges to
2 stormwater conveyance systems other than those specifically set forth in Special Condition
3 D(1)(a) of the General Permit and meeting each of the conditions set forth in Special Condition
4 D(1)(b).

5 23. The General Permit requires dischargers commencing industrial activities before October
6 1, 1992 to develop and implement an adequate written Monitoring and Reporting Program no
7 later than October 1, 1992. Existing facilities covered under the General Permit must implement
8 all necessary revisions to the monitoring program no later than August 1, 1997.

9 24. As part of the monitoring program, dischargers must identify all storm water discharge
10 locations that produce a significant storm water discharge, evaluate the effectiveness of BMPs
11 in reducing pollutant loading, and evaluate whether pollution control measures set out in the
12 SWPPP are adequate and properly implemented. Dischargers must conduct visual observations
13 of these discharge locations for at least one storm per month during the wet season (October
14 through May) and record their findings in their Annual Report. Dischargers must also collect
15 and analyze storm water samples from at least two storms per year. (Section B(5). Section
16 B(5)(c)(ii) requires dischargers to sample for toxic chemicals and other pollutants likely to be
17 in the storm water discharged from the facility. Section B(5)(c)(iii) requires dischargers to
18 sample for parameters dependent on a facility's Standard Industrial Classification ("SIC") code.
19 Dischargers must also conduct dry season visual observations to identify sources of non-storm
20 water pollution. (Section B(7)(a).

21 25. Section B(14) of the General Permit requires dischargers to submit an Annual Report by
22 July 1 of each year to the executive officer of the relevant Regional Water Quality Control
23 Board. Section A(9)(d) of the General Permit requires the discharger to include in the annual
24 report an evaluation of storm water controls, including certifying compliance with the General
25 Permit. (*See also* Sections C(9), C(10)).

26 26. CWA §§ 505(a)(1) and 505(f), 33 U.S.C. §§ 1365(a)(1), (f), and 1362(5) provide for
27 citizen enforcement actions against any "person," including individuals, corporations, or
28

1 partnerships, for violations of NPDES permit requirements and for unpermitted discharges of
2 pollutants. An action for injunctive relief under the Act is authorized by CWA §505(a), 33
3 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up
4 to \$37,500 per day/per violation pursuant to CWA §§ 309(d) and 505, 33 U.S.C. §§ 1319(d),
5 1365. *See also* 40 C.F.R. §§ 19.1 - 19.4.

6 27. The Regional Water Quality Control Board, San Francisco Bay Region ("RWQCB") has
7 established water quality standards for the Lagunitas Creek Watershed in the Water Quality
8 Control Plan for the San Francisco Bay Basin, generally referred to as the Basin Plan. The Basin
9 Plan includes a narrative toxicity standard which states that "[a]ll waters shall be maintained free
10 of toxic substances in concentrations that are lethal or that produce other detrimental responses
11 in aquatic organisms." Further, that "[w]aters shall not contain suspended material in
12 concentrations that cause nuisance or adversely affect beneficial uses."

13 28. On April of 2000 the State Water Resources Control Board adopted the *Policy for*
14 *Implementation of Toxics Standard for Inland Surface Waters, Enclosed Bays, and Estuaries of*
15 *California* which implements criteria for priority toxic pollutants contained in the California
16 Toxic Rule. The U.S. EPA adopted the National Toxics Rule on February 5, 1993 and the
17 California Toxics Rule on May 18, 2000. *See* 40 C.F.R. part 131.

18 V. STATEMENT OF FACTS

19 29. Defendant LUNNY GRADING & PAVING, INC. owns and operates the business known
20 as NICASIO ROCK QUARRY, located at 5400 Nicasio Valley Road, Nicasio, California (the
21 "Quarry"), a 6-acre site including several rock storage piles, multiple storage areas for
22 equipment, large unpaved areas, and a water storage pond. Activities at the Quarry including
23 storage of rocks; heavy equipment storage, maintenance, and repair; and, manufacturing of
24 gravel, fall within SIC Code 14 (Mining and Quarrying of Nonmetallic Minerals, Except Fuels)
25 and SIC Code 1423 (Crushed and Broken Granite).

26 30. Defendant LUNNY GRADING & PAVING, INC. filed a Notice of Intent agreeing to
27 comply with the terms and conditions of the General Permit. The State Water Resources Control
28

1 Board approved the Notice of Intent, and assigned Waste Discharger Identification (“WDID”)
2 number 2 21I015249 to the Quarry.

3 31. The Quarry is located within 1,000 feet of Halleck Creek, a water of the United States.
4 Stormwater and non-stormwater from the Quarry enter an on-site storage pond. The stormwater
5 and non-stormwater then either overflow the storage pond or percolate via hydrological
6 connection to Halleck Creek.

7 32. Vehicle and equipment storage, maintenance and repair activities conducted at the Quarry
8 render oil, grease, and other pollutants which flow unobstructed to the storage pond.

9 33. Uncovered rock and gravel storage is located throughout the Quarry and is exposed to
10 rain, resulting in contaminated stormwater which flows unobstructed to the storage pond and
11 to Halleck Creek.

12 34. Water generated from the washing of rock and gravel becomes contaminated with
13 sediment, metals, and other pollutants, and flows into the storage pond which is hydrologically
14 connected to Halleck Creek.

15 35. Plaintiff is informed and believes and on such information and belief alleges that current
16 BMPS implemented at the Quarry are wholly inadequate to prevent the sources of contamination
17 described in the preceding paragraphs from causing the discharge of pollutants to waters of the
18 United States. The Quarry lacks essential structural controls such as grading, berming, and
19 roofing to prevent rainfall and stormwater from coming into contact with these and other sources
20 of contaminants. The Quarry lacks structural controls to prevent the discharge of water once
21 contaminated; and, lacks an adequate filtration system, to treat water once contaminated.

22 36. Plaintiff is informed and believes and on such information and belief alleges, that as a
23 result of Defendants’ practices enumerated in EXHIBIT A and herein, stormwater containing
24 pollutants harmful to fish, plants, animals and human health; and harmful to the beneficial uses
25 of Halleck Creek and the Lagunitas Creek Watershed, are being discharged from the Quarry
26 during every rain event.

27 //

1 37. Plaintiff is informed and believes, and on such information alleges, that Defendants have
2 failed to develop and implement an adequate SWPPP for the Quarry in violation of the General
3 Permit.

4 38. Plaintiff is informed and believes, and on such information alleges, that Defendants have
5 failed to develop and implement adequate monitoring, reporting, and sampling programs for the
6 Quarry.

7 **VI. FIRST CAUSE OF ACTION**

8 **Violation of CWA § 402(p), 33 U.S.C. § 1342(p)**

9 **(Discharging Pollutants in Violation of the General Permit)**

10 Plaintiff re-alleges and incorporates by reference the allegations of Paragraphs 1 through
11 38 as though fully set forth herein including all allegations in EXHIBIT A. Plaintiff is informed
12 and believes and on such information alleges as follows:

13 39. Defendants have violated and continue to violate an “effluent standard or limitation”
14 under CWA § 505(a)(1), 33 U.S.C. § 1342(p); 40 C.F.R. § 122.26, or an order issued by the
15 State with respect to such a standard or limitation.

16 40. By law and by the terms of the General Permit, violations of the General Permit are
17 violations of the CWA. *See* 40 C.F.R. § 122.41(a).

18 41. Defendants’ violations are ongoing, and will continue after the filing of this Complaint.
19 Plaintiff alleges herein all violations which may have occurred or will occur prior to trial, but
20 for which data may not have been available or submitted or apparent from the face of the reports
21 or data submitted by Defendants to the RWQCB or to Plaintiff prior to the filing of this
22 Complaint. Plaintiff will amend this Complaint if necessary to address Defendants’ violations
23 of the General Permit which may occur after the filing of this Complaint. Each violation is a
24 separate violation of the CWA.

25 42. Plaintiff alleges that without the imposition of appropriate civil penalties and the issuance
26 of appropriate equitable relief, Defendants will continue to violate the CWA as well as State and
27 Federal standards with respect to the enumerated discharges and releases alleged herein related
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1 to the Quarry. Further, that the relief requested in this Complaint will redress the injury to
2 Plaintiff and its members, prevent future injury, and protect the interests of Plaintiff's members
3 which are or may be adversely affected by Defendants' violations of the General Permit.

4 **VIII. RELIEF REQUESTED**

5 Wherefore, Plaintiff respectfully requests that this Court grant the following relief:

6 43. Declare Defendants to have violated and to be in violation of the Clean Water Act as
7 alleged herein;

8 44. Enjoin Defendants from further violating the substantive and procedural requirements of
9 the General Permit;

10 45. Order Defendants to pay civil penalties for each violation of the Act pursuant to CWA
11 §§ 309(d) and 505(a), 33 U.S.C. §§ 1319(d), 1365(a) and 40 C.F.R. §§ 19.1 - 19.4;

12 46. Order Defendants to take appropriate actions to restore the quality of United States waters
13 impaired by their activities;

14 47. Award Plaintiff's costs (including reasonable attorney, witness, and consultant fees) as
15 authorized by the CWA §505(d), 33 U.S.C. §1365(d); and,

16 48. Award any such other and further relief as this Court may deem appropriate.

17
18 DATED: July 8, 2013



SARAH DANLEY
Attorney for Plaintiff
CALIFORNIA RIVER WATCH

EXHIBIT A

Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402
Phone 707-528-8175 Fax 707-528-8675
lhm28843@sbeglobal.net



VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

February 11, 2013

Kevin J. Lunny
Owner/Site Manager/Operator
Nicasio Rock Quarry
5400 Nicasio Valley Road
Nicasio, CA 94946

Kevin J. Lunny, President, CEO,
Registered Agent for Service of Process
Lunny Grading & Paving, Inc.
17300 Sir Francis Drake Blvd.
Inverness, CA 94937

Re: Notice of Violations and Intent to File Suit Under the Clean Water Act

Dear Owner, Operator and Site Manager:

NOTICE

The Clean Water Act ("CWA" or the "Act") §505(b), 33 U.S.C. §1365(b), requires that sixty (60) days prior to the initiation of a civil action under CWA §505(a), 33 U.S.C. §1365(a), a citizen must give notice of intent to sue to the alleged violator, the Environmental Protection Agency ("EPA") and the State in which the alleged violations occur.

This Notice is provided on behalf of Northern California River Watch ("River Watch"), who hereby places Nicasio Rock Quarry and Lunny Grading & Paving, Inc. (hereinafter referred to as "the Discharger") on notice, that following the expiration of sixty (60) days from the date of this Notice, River Watch intends to bring suit in the U.S. District Court against the Discharger for continuing violations of "an effluent standard or limitation," permit condition or requirement, "and/or order issued by the Administrator or a State with respect to such standard or limitation" under Clean Water Act § 505(a)(1), 33 U.S.C. § 1365(a)(1), the Code of Federal Regulations, and the Regional Water Quality Control Board

- North Coast Region, Region Water Quality Control Plan, ("Basin Plan") as exemplified by the Discharger's unlawful discharge of pollutants into waters of the United States without a National Pollution Discharge Elimination System ("NPDES") permit for point source as opposed to non-point source discharges (*see* CWA §§ 402(a) and (b)). This Notice addresses the Discharger's failure to comply with the terms and conditions of California's General Industrial Storm Water Permit for Industrial Storm Water Discharges, NPDES General Permit No. CAS000001[State Water Resources Control Board] Order No. 97-03-DWQ and Water Quality Order No. 91-13-DWQ (as amended by Water Quality Order 92-12-DWQ) issued pursuant to Clean Water Act § 402(p), 33 U.S.C. § 1342(p) ("General Permit"), its unpermitted discharges of contaminated stormwater, and its discharges of non-stormwater pollutants in violation of effluent limitations mandated in the General Permit.

The CWA regulates the discharge of pollutants into navigable waters, including the discharge of pollutants through stormwater. The statute is structured in such a way that all discharges of pollutants are prohibited with the exception of enumerated statutory provisions. One such exception authorizes a polluter, who has been issued a permit pursuant to CWA § 402, 33 U.S.C. § 1342, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards and limitations specified in a NPDES Permit define the scope of the authorized exception to the 33 U.S.C. § 1311(a) prohibition, such that the violation of a permit limit places a polluter in violation of 33 U.S.C. § 1311(a), and thus in violation of the CWA. Private parties may bring citizens' suits pursuant to 33 U.S.C. § 1365 to enforce effluent standards or limitations, including violations of 33 U.S.C. § 1311(a), 33 U.S.C. § 1342(p), and 33 U.S.C. § 1365(f)(1).

Clean Water Act § 402(p)(4)(A) required the EPA to establish regulations for permits for discharges of stormwater associated with industrial activity. The EPA's stormwater discharge regulations provide that, "Dischargers of storm water associated with industrial activity are required to apply for an individual permit, apply for a permit through a group application, or seek coverage under a promulgated storm water general permit." 40 C.F.R. § 122.26(c)(1). The Ninth Circuit has observed that "the language 'discharges associated with industrial activity' is very broad. The operative word is 'associated.' It is not necessary that stormwater be contaminated or come into direct contact with pollutants; only association with any type of industrial activity is necessary." *See Natural Resources Defense Council, Inc. v. EPA*, 966 F.2d 1292, 1304 (9th Cir. 1992).

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the EPA to a state or regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the agency operates satisfies certain criteria. *See* 33 U.S.C. § 1342(b). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board and several subsidiary Regional Water Quality Control Boards to issue NPDES

permits. The entity responsible for issuing NPDES permits, including municipal stormwater permits, and otherwise regulating discharges in the region at issue in this Notice is the Regional Water Quality Control Board, North Coast Region ("RWQCB").

The CWA requires that any notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. *The specific standard, limitation, or order alleged to have been violated.*

To comply with this requirement, River Watch notices the Discharger of the ongoing violations of the substantive and procedural requirements of CWA § 402(p) and violations of the General Permit. The Discharger filed an Notice of Intent (NOI) agreeing to comply with the terms and conditions of the General Permit. The State Water Resources Control Board approved the NOI and the Discharger was assigned Waste Discharger Identification ("WDID") number 228S003380. River Watch contends that in the operation of the quarry facilities in Nicasio, the Discharger has failed and is failing to comply with the terms and conditions of the General Permit requiring the preparation, implementation, review and update of an adequate Storm Water Pollution Prevention Plan ("SWPPP"), the elimination of all non-authorized storm water discharges, and the development and implementation of an adequate monitoring and reporting program.

2. *The activity alleged to constitute a violation.*

River Watch has set forth narratives below describing the violations of the Discharger's SWPPP and the General Permit, describing with particularity specific incidents referenced in the RWQCB's public documents available to the Discharger.

3. *The person or persons responsible for the alleged violation.*

The persons responsible for the alleged violations identified in this Notice are Nicasio Rock Quarry, Lunny Grading & Paving, Inc., and the employees of both entities who may be responsible for compliance with the SWPPP for the Nicasio Rock Quarry.

4. *The location of the alleged violation.*

The location of the various violations are identified in records created and/or maintained by the Discharger and the RWQCB which relate to the Nicasio Rock Quarry located at 5400 Nicasio Valley Road in Nicasio, California and the surrounding United States waters, including Halleck Creek.

5. *The date or dates of violation or a reasonable range of dates during which the alleged violations occurred.*

River Watch has examined records maintained by the RWQCB from February 1, 2008 through February 1, 2013. The dates of violations alleged in this Notice are February 1, 2008 through February 1, 2013. River Watch will from time to time update this Notice to include all violations which occur after the range of dates currently covered. Some violations are continuous and therefore each day constitutes a violation.

6. *The full name, address, and telephone number of the person giving notice.*

The entity giving this Notice is California River Watch, a non-profit corporation organized under the laws of the State of California, located 290 S. Main Street, #817, Sebastopol, CA, 95472. River Watch is dedicated to the protection, enhancement and restoration of the surface and groundwaters of the State of California including all rivers, creeks, streams, wetlands, vernal pools and tributaries of California. River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys.

River Watch has retained legal counsel with respect to the violations set forth in this Notice. All communications relating to this Notice should be addressed to:

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Law Office of Jack Silver
Jerry Bernhaut, Esq.
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Email: lhm28843@sbcglobal.net

BACKGROUND

The Discharger owns and operates the quarry facilities located at 5400 Nicasio Valley Road. The quarry processes hard rock producing rip rap, rock used to armor shorelines, streambeds, pilings, and other shoreline structures; and crushed aggregates. The main rock is a hard igneous, green stone mainly used for landscape features and solid slope protection, and aggregate for road base and drainage systems.

The processing operation primarily involves material crushing and/or sorting, on-site road and staging area improvements, on-site storage of materials, loading activities, truck hauling, and incidental erosion and drainage control. Process waters containing pollutants

are discharged to percolation ponds located on the facilities, which then migrate to Halleck Creek due to the hydrological connection of the two water bodies. Processed materials are stockpiled for later use. Extracted gravel is stockpiled until further processed. Raw and sorted materials are stored in and around the staging area of the adjacent rock pit.

The General Permit prohibits the discharge of material other than stormwater to waters of the United States, unless such discharges are regulated under a NPDES permit; and, prohibits the discharge of stormwater which causes or *threatens to cause* pollution, contamination, or nuisance. The General Permit prohibits the discharge of stormwater to surface or ground water which adversely impacts human health or the environment.

The quarry facilities in Nicasio are subject to stormwater effluent limitations, new source performance standards, and toxic pollutant effluent standards (40 C.F.R. Subchapter N) as well as effluent limitation guidelines specified by 40 C.F.R. Parts 411, 436, 440 and 443. The Discharger is required to develop Best Management Practices (“BMPs”) using Best Available Technology (“BAT”) and best conventional technology (“BCT”) to control and/or eliminate pollution.

River Watch contends that from February 1, 2008 to February 1, 2013, the Discharger has been in violation of the CWA by reason of its failure to comply with the General Permit; failure to make and record the required observations concerning stormwater discharges; and failure to implement BMPs using BAT and/or BCT to eliminate pollution in stormwater discharges from the quarry facilities.

In the Discharger’s 2011-2012 Annual Report for the quarry facilities, total petroleum hydrocarbons were found in stormwater at 2.4 mg/L, exceeding the level of 0 mg/L mandated in the General Permit. Current BMPs are inadequate to fully contain non-stormwater discharges from reaching nearby Halleck Creek. In a October 26, 2011 inspection report, the RWQCB found multiple violations of the General Permit’s BMP requirements: The water in the settlement pond was very brown and had been sitting for several days if not weeks. The drainage ditch intended to prevent runoff to Halleck Creek is unfinished and poorly built. The fiber roll is improperly installed and maintained and therefore does not contain sedimentation as intended. Storage areas are not paved or marked. The vehicle parking area is paved, but has significant sediment accumulation which could wash off into nearby Halleck Creek.

Attached to this Notice are three photographs of areas of the quarry site and facilities – two of the percolation pond and one of a drainage ditch. These photographs were extracted from the RWQCB’s October 26, 2011 inspection report.

River Watch alleges the Discharger has failed to implement BMPs at the quarry facilities by not using BAT or BCT to control or eliminate its non-stormwater discharges. The Discharger is violating the General Permit by: (1) allowing materials other than storm water (non-storm water discharges) to discharge either directly or indirectly to waters of the United States; (2) causing or threatening to cause pollution, contamination, or nuisance; exceeding the specified effluent limitations identified above; (3) discharging storm water containing a hazardous substance equal to or in excess of a reportable quantity listed in 40 C.F.R. Part 117 and/or 40 C.F.R. Part 302; (4) failing to reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges through implementation of BAT for toxic and non-conventional pollutants and BCT for conventional pollutants; (5) failing to develop and implement a SWPPP that complies with the requirements in Section A of the General Permit, and that includes BMPs that achieve BAT/BCT which constitutes compliance with this requirement; and (6) discharging storm water and non-storm water to surface or ground water which adversely impact human health or the environment.

The General Permit requires the SWPPP and the associated site map to be kept current and complete. The Discharger's SWPPP is fourteen (14) years old and does not demonstrate current site conditions. The site map is nine (9) years old and does not show conveyances, sheet flow, paved and unpaved portions of the site, areas subject to erosion, areas of industrial activities, and all BMPs implemented. The Discharger has inadequately identified and assessed all potential sources of pollutants and has failed to describe the appropriate BMPs necessary to reduce or prevent these potential pollutants in the SWPPP.

One of the major elements of the SWPPP is the elimination of unauthorized non-storm water discharges to the quarry's storm drain system. Unauthorized non-storm water discharges are generated from a wide variety of pollutant sources, including waters from the rinsing or washing of vehicles, equipment, buildings, or pavement, quarry rock, and materials that have been improperly disposed. Unauthorized non-storm water discharges can contribute a significant pollutant load to receiving waters. Measures to control spills, leakage, and dumping must be addressed through BMPs. The Discharger's BMPs fail to adequately address specific sources of pollution found at the quarry facilities. The SWPPP does not evaluate all potential pollution conveyances to determine whether they convey unauthorized non-storm water discharges to the storm drain system or whether hydrologically- connected ground water is being polluted by discharge from the percolation ponds.

For example, during the period reflected in the 2011-2012 Annual Report, there were six (6) separate non-stormwater discharges from the pond outlet (October 4, 2011, November 6, 2011, January 21, 2012, February 7, 2012, March 14, 2012, and April 12, 2012). The quarry site is completely uncovered exposing rocks, aggregate, finished material, and equipment to stormwater. According to the Discharger's records, all stormwater from the

site is supposedly gathered in the percolation pond. However, as can be seen from the attached Google Map, there are large areas of the site where stormwater drains away from the percolation pond toward Halleck Creek. The stormwater that does make it to the percolation pond, less than 1,000 feet from Halleck Creek, is left to sit until it evaporates.

The Discharger must either prevent unauthorized non-stormwater discharges or apply for a CWA §402 individual NPDES permit for quarry facilities and operations. From February 1, 2008 through February 1, 2013, the Discharger has discharged pollutants from point sources including equipment, percolation ponds, stock piles, equipment, channels and culverts, or pollutants produced during operations on the quarry facilities, into waters of the United States without a CWA § 402(p) individual NPDES permit in violation of the CWA. These violations are continuing.

The Discharger's illegal discharges exceeding Basin Plan standards as alleged by River Watch in this Notice are a significant contribution to the degradation of the Halleck Creek and tributary waters, such as the Nicasio Reservoir, with adverse effects on beneficial uses of those waters. Halleck Creek drains into the Nicasio Reservoir which serves as a drinking water supply for the Marin Municipal Water District. Nicasio Reservoir drains from Nicasio Creek into Lagunitas Creek, a major supply of drinking water for Marin County. Lagunitas Creek eventually joins Olema Creek and empties into Tomales Bay. All of these are waters of the United States. River Watch members residing in the area have a vital interest in bringing the Discharger's operations at the quarry facilities into compliance with the CWA.

VIOLATIONS

River Watch contends the following violations by the Discharger with respect to the Nicasio quarry facilities from February 1, 2008 through February 1, 2013, and, that said violations are ongoing:

1. Failure to comply with the General Permit by discharging materials other than stormwater (such as total petroleum hydrocarbons and metals) from a point source (percolation ponds, equipment, rock piles, channels and culverts) into a water of the United States without a NPDES Permit.
2. Failure to comply with the General Permit by discharging stormwater that causes or threatens to cause pollution, contamination or nuisance.

3. Inadequate BMPs:

- A. The percolation pond is inadequately designed to protect groundwater, and is likely hydrologically connected to Halleck Creek. Water in the pond sits for days or weeks.
- B. The runoff prevention drainage ditch is unfinished and poorly maintained.
- C. The fiber roll is improperly installed and maintained.
- D. Significant sediment accumulation on paved areas of the site could lead to contamination of stormwater.

4. Inadequate SWPPP:

- A. The SWPPP is fourteen (14) years old and does not describe current site conditions.
- B. The Site Map is nine (9) years old and is missing information such as paved and unpaved areas, current and potential conveyances, areas subject to erosion, and areas where industrial activity occurs.
- C. There is inadequate identification and assessment of all potential sources of pollutants.
- D. The SWPPP fails to describe appropriate BMPs to reduce or prevent potential pollutants from entering the stormwater.
- E. The SWPPP fails to assess all potential conveyances to determine whether they convey unauthorized non-stormwater discharges.

River Watch members residing in the area have a vital interest in bringing the Discharger's operation of its quarry facilities into compliance with the CWA. River Watch alleges that without the implementation of the relief requested above the Discharger's violations and their adverse effects will continue into the future.

REMEDIAL MEASURES REQUESTED

- 1. Improvement of BMPs to prevent unauthorized non-stormwater discharges from the quarry facilities;

2. Preparation and filing of an updated SWPPP to include all potential pollutants and sources of those pollutants, current BMPs and new BMPs to prevent unauthorized non-stormwater discharges.
3. Updating of the Site Map to include all sources of potential pollutants, direction of sheet flow, direction of groundwater flow, identification of paved and unpaved portions of the site, industrial activities at the site, and all BMPs currently implemented.
4. Redesigning of the percolation pond to ensure that water from the pond reaching Halleck Creek does not violate the receiving water limitations in the General Permit.
5. Improvement of the drainage ditch to ensure that all sediment-laden runoff is conveyed to the percolation pond.
6. Proper installation and maintenance of the fiber roll.
7. Maintenance of the paved vehicle area such that the area is kept clean from sedimentation, and ensures that vehicle repair conforms to General Permit BMP standards.
8. Covering of soil piles and other sources of sedimentation to prevent erosion and limit sedimentation.
9. Compliance with CWA §402(a) by either eliminating discharges of pollutants from a point source to water of the United States without a NPDES permit; or applying for and receiving an individual pollutant discharge NPDES permit.

CONCLUSION

The violations as set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected community. The members' health, use and enjoyment of this natural resource is specifically impaired by the Discharger's violations of the CWA as identified in this Notice.

River Watch believes this Notice sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter River Watch intends to file a citizen's suit under CWA § 505(a) against the Discharger for the violations identified herein.

During the 60-day notice period, River Watch is willing to discuss effective remedies for these violations. If the Discharger wishes to pursue such discussions, it is suggested that a dialog be initiated soon so that discussions may be completed before the end of the 60-day notice period. River Watch does not intend to delay the filing of a lawsuit if discussions are continuing when that notice period ends.

Very truly yours,


Jerry Bernhaut

JB:lhbm

Enclosures

cc: Administrator
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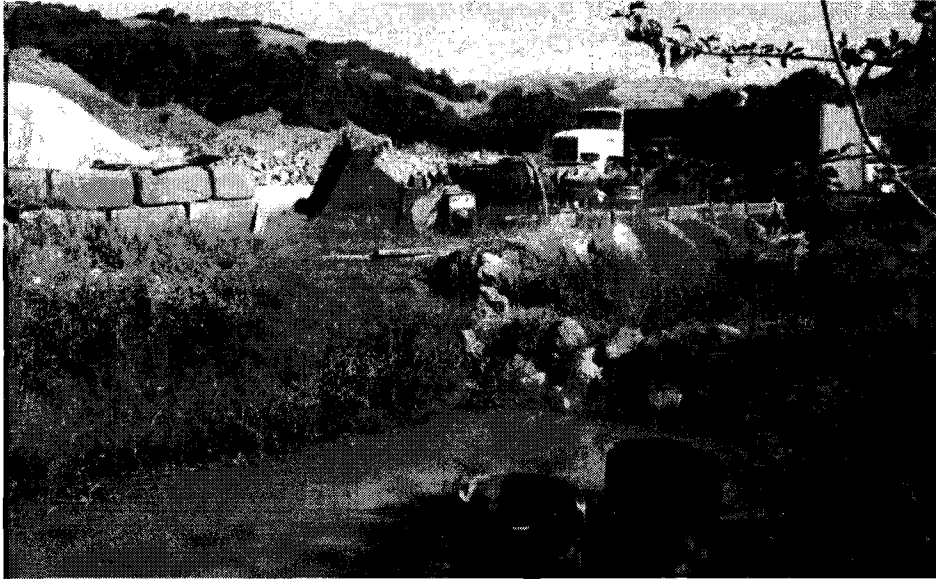
Google Map - Nicasio Rock Quarry - 5400 Nicasio Valley Road, Nicasio, California



Percolation Pond - Nicasio Rock Quarry



Percolation Pond - Nicasio Rock Quarry

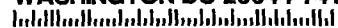


Drainage Ditch - Nicasio Rock Quarry



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